

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALVIN DAMPIER, ) CASE NO. C05-1472-JCC-MAT  
 )  
 Plaintiff, )  
 )  
 v. ) REPORT AND RECOMMENDATION  
 )  
 KING COUNTY JAIL, )  
 )  
 Defendant. )  
 )

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Plaintiff is a prisoner at the King County Jail in Seattle, Washington. He has submitted to this Court for review a *pro se* civil rights complaint under 42 U.S.C. § 1983 together with an application to proceed with this action *in forma pauperis*. Plaintiff asserts in his complaint that he has tracking devices in his feet, legs, teeth, and hands which allow every conversation and every movement of his to be tracked. He contends that these devices are a part of a civil conspiracy which is causing him major mental health problems. He identifies the King County Jail as the sole defendant in this action and indicates that he wishes to have the Jail held liable for negligence and malpractice based, apparently, on the Jail's role in the alleged conspiracy.

In order to sustain a civil rights action, a plaintiff must show (1) that he suffered a violation

01 of rights protected by the Constitution or created by federal statute, and (2) that the violation was  
02 proximately caused by a person acting under color of state or federal law. *See Crumpton v. Gates*,  
03 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy the second prong, a plaintiff must allege facts  
04 showing how individually named defendants caused or personally participated in causing the harm  
05 alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A defendant  
06 cannot be held liable solely on the basis of supervisory responsibility or position. *Monell v.*  
07 *Department of Social Servs., of City of New York*, 436 U.S. 658, 691-694 (1978). Rather, a  
08 plaintiff must allege that a defendant's own conduct violated the plaintiff's civil rights. *City of*  
09 *Canton, Ohio v. Harris*, 489 U.S. 378, 385-90 (1989).

10 A local government unit or municipality can be sued as a "person" under § 1983. *Monell*,  
11 436 U.S. at 691. However, a municipality cannot be held liable under § 1983 solely because it  
12 employs a tortfeasor. *Id.* A plaintiff seeking to impose liability on a municipality under § 1983  
13 must identify a municipal "policy" or "custom" that caused his or her injury. *Bryan County*  
14 *Commissioners v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell* 436 U.S. at 694). Plaintiff's  
15 complaint fails to meet these standards.

16 The Court first notes that the King County Jail, as an entity of King County, is not a proper  
17 defendant in this action. *See Nolan v. Snohomish County*, 59 Wn.App. 876, 883 (1990) ("in a  
18 legal action involving a county, the county itself is the only legal entity capable of suing and being  
19 sued.") Even assuming plaintiff's complaint can reasonably be construed as asserting a claim  
20 against King County, plaintiff has not specifically alleged the violation of any federal constitutional  
21 right nor has he alleged that any policy or custom of King County caused the harm alleged in the  
22 complaint.

01 Accordingly, plaintiff has not adequately alleged a cause of action under § 1983. Because  
02 it appears unlikely that the deficiencies in plaintiff's complaint could be cured by amendment, this  
03 Court recommends that plaintiff's application to proceed *in forma pauperis* be denied. A  
04 proposed order accompanies this Report and Recommendation.

05 DATED this 12th day of October, 2005.

06   
07 Mary Alice Theiler  
08 United States Magistrate Judge